

planning to transfer ownership or control to another firm, action must be taken immediately to preserve the option of waiving the termination requirement. The contracting officer should determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to waive the termination requirement, and termination of the contract would severely impair attainment of the agency's program objectives or mission, the contracting officer should immediately notify the SBA in writing that the agency is requesting a waiver. Within 15 business days thereafter, or such longer period as agreed to by the agency and the SBA, the agency head shall either confirm or withdraw the request for waiver. Unless a waiver is approved by the SBA, the contracting officer shall terminate the contract for convenience upon receipt of a written request by the SBA. This statutory requirement for a convenience termination does not affect the Government's right to terminate for default if the cause for termination of an 8(a) contract is other than the transfer of ownership or control.

[54 FR 46005, Oct. 31, 1989, as amended at 56 FR 15151, Apr. 15, 1991]

### Subpart 19.9—[Reserved]

### Subpart 19.10—Small Business Competitiveness Demonstration Program

SOURCE: 54 FR 5055, Jan. 31, 1989, unless otherwise noted.

#### 19.1001 General.

The Small Business Competitiveness Demonstration Program was established by Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656, as amended by Title II of Pub. L. 102-366 and implemented by an OFPP Policy Directive and Test Plan, dated August 31, 1989, as amended on April 16, 1993. The program will be conducted over the period from January 1, 1989, through September 30, 1996. Pursuant to Section 713(a) of Pub. L. 100-656, the requirements of the FAR

that are inconsistent with the program procedures are waived. The program consists of two major components—

- (a) A test of unrestricted competition in four designated industry groups; and
- (b) A test of enhanced small business participation in 10 agency targeted industry categories.

[55 FR 52792, Dec. 21, 1990, as amended at 59 FR 11376, Mar. 10, 1994; 59 FR 67036, Dec. 28, 1994]

#### 19.1002 Definition.

*Emerging small business*, as used in this subpart, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

#### 19.1003 Purpose.

The purpose of the demonstration program is to—

- (a) Test the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in section 19.1005.

- (b) Measure the extent to which awards are made to a new category of small businesses (ESB's), and to provide for certain acquisitions to be reserved for ESB participation only. This portion of the program is also limited to the four designated industry groups listed in section 19.1005.

- (c) Expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased management attention, and specifically tailored acquisition procedures, as implemented through agency procedures.

[54 FR 5055, Jan. 31, 1989, as amended at 55 FR 52792, Dec. 21, 1990]

#### 19.1004 Participating agencies.

The following agencies have been identified as participants in the demonstration program:

- The Department of Agriculture.
- The Department of Defense, except the Defense Mapping Agency.
- The Department of Energy.

## Federal Acquisition Regulation

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The Department of Health and Human Services.

The Department of Interior.

The Department of Transportation.

The Department of Veterans Affairs.

The Environmental Protection Agency.

The General Services Administration.

The National Aeronautics and Space Administration.

[54 FR 5055, Jan. 31, 1989, as amended at 54 FR 29281, July 11, 1989; 55 FR 38516, Sept. 18, 1990]

### 19.1005 Applicability.

(a) *Designated industry groups.* (1) Construction under standard industrial classification (SIC) codes that comprise Major Groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216).

(2) Refuse systems and related services including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) Architectural and engineering services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713, which are awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (see subpart 36.6) (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404).

(4) Nonnuclear ship repair (including overhauls and conversions) performed on nonnuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

(b) *Targeted industry categories.* Each participating agency, in consultation with the Small Business Administration, shall designate its own targeted industry categories for enhanced small business participation.

[55 FR 52792, Dec. 21, 1990, as amended at 59 FR 67036, Dec. 28, 1994]

### 19.1006 Procedures.

(a) *General.* (1) All solicitations shall include the applicable SIC code and size standards.

(2) The face of each award made pursuant to the program shall contain a

statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.

(b) *Designated industry groups.* (1) Solicitations for acquisitions in any of the four designated industry groups issued from January 1, 1989, through September 30, 1996, that have an anticipated dollar value greater than \$25,000 shall not be considered for small business set-asides under subpart 19.5 (however, see subparagraphs (b)(2) and (c)(1) of this section). Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see subpart 19.8).

(2) Agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational unit(s) that failed to meet the small business participation goal.

(c) *Emerging small business set-aside.*

(1) All acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount established by the Office of Federal Procurement Policy shall be set aside for ESB's; *provided* that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESB's that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer shall—

(i) For acquisitions \$25,000 or less, proceed in accordance with 13.105 or subpart 19.5; or

(ii) For acquisitions over \$25,000, proceed in accordance with paragraph (b) of this section.

(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer shall cancel the ESB set-aside and proceed in accordance with (c)(1) (i) or (ii) of this section.

(3) When using other than simplified acquisition procedures for ESB set-